

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 271 of 1988

in

SPECIAL CIVIL APPLICATION No 2547 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

and

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MANSUKHLAL GAURISHANKAR BADHEKA

Versus

STATE OF GUJARAT

Appearance:

M/S NJ MEHTA ASSO. for Appellant

MR BY MANKAD, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE B.C.PATEL and
 MR.JUSTICE C.K.BUCH

Date of decision: 15/12/98

ORAL JUDGEMENT [PER : B.C.PATEL, J]

Appellant, being aggrieved by the order of

dismissal of Special Civil Application No. 2547/86 by learned Single Judge of this Court on 6.4.1988, has preferred this appeal.

The facts as emerging from the record are that the appellant was selected for Class:II post in Administrative Branch by Gujarat Public Services Commission as direct recruit somewhere in the year 1977. In view of certain criminal offences being investigated and prosecution being filed against the appellant being Criminal Case No. 2273/78, it transpires that he was not appointed. As averred in the petition, appellant was acquitted by the judgment and order dated 24.8.1979. It is thereafter the Government considered his request and was appointed on 24.3.1986. It is on this basis the appellant has prayed that he should have been given deemed date of appointment as 24.8.1979, the date on which he came to be acquitted by the Court.

After order of acquittal, the appellant, kept quite and did nothing. He could have filed petition soon thereafter and rights would have been crystallised earlier, but he waited for appointment and only after order of appointment was issued on 24.3.1986, he filed petition before learned Single Judge. There is no explanation why he kept quite for a pretty long period of 7 years for service.

In the instant case, it is also required to be noted that the appellant was appointed as a direct recruit by an order dated 24.3.1986. The appellant accepted the channel of direct recruitment and obviously therefore there was a condition with regard to the period of probation. Before learned Single Judge, contention was also raised that no period of probation should have been stipulated and learned Single Judge rightly rejected that in view of the fact that the appellant having opted, as stated earlier, the order of appointment as a direct recruit, he cannot say that the period of probation should not be there. However, learned Single Judge in the facts and circumstances of the case, permitted the appellant to move the government by making proper representation with observation that the government will consider said representation, if made, with due sympathy. Learned counsel appearing for the appellant has stated that to his knowledge, no such representation is made.

Appellant, for the first time, entered services on 24.3.1986. Before that, he was not born in the cadre and obviously, therefore, he cannot be given any earlier date than the date on which he was appointed. In our view, learned Single Judge rightly permitted the petitioner to make proper representation so that if accepted, period of probation can be reduced. Under the

circumstances, we do not find any reason to interfere with the order passed by learned Single Judge and hence appeal stands dismissed with no orders as to costs.

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